

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed

#### Rule making related to electronic visit verification

The Human Services Department hereby amends Chapter 73, “Managed Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 249A.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 249A.

#### *Purpose and Summary*

Electronic visit verification (EVV) is a federal requirement for states to implement. In December 2016, the 21st Century Cures Act was signed into law. Section 12006 of the Act requires EVV for personal care services beginning January 1, 2020, and for home health services beginning January 1, 2023. Iowa was granted a one-year good-faith exemption, so the requirement for Iowa is January 1, 2021, for personal care services and January 1, 2023, for home health services. The Department is using a managed care implementation model for EVV.

EVV uses technology to electronically record when attendants begin and end providing services to Medicaid members. EVV will be used to ensure members are receiving the care they need that is outlined in the members’ service plan. EVV will be used to monitor the delivery and utilization of personal care and home health services in nontraditional settings and will provide verification of the visit with location information and a time stamp. EVV will be used to ensure quality and program integrity. It also streamlines billing for providers. Once a visit is complete, the claim is sent to the managed care organization (MCO) for payment.

EVV was implemented January 1, 2021, in accordance with federal regulations. Payments were made outside of the system in January to allow providers to start using the system and become familiar with its applications. Providers began fully using the system February 1, 2021. These amendments provide additional guidance for providers.

Beginning January 1, 2021, personal care service providers including consumer-directed attendant care (CDAC) providers, homemaker providers, and consumer choice option employees that provide personal care services are required to use EVV. The Department has extended the deadline for assisted living and residential care facilities to July 1, 2021. The EVV implementation for the fee-for-service (FFS) population will be deployed in a second phase for compliance.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 10, 2021, as **ARC 5437C**. The Department received comments from two respondents/organizations. The respondents’ comments suggesting changes to these rules and the Department’s responses to these comments follow:

**Comment 1:** One respondent submitted two comments regarding the 21st Century Cures Act and the fact that EVV was being required for personal care or home health care services provided by CDAC who live in the same home as the person they provide for. The respondent stated there was no checking in or out when they are there 24 hours a day. The respondent requested that an exception be made for caregivers who reside with the person they are providing care for.

The respondent also stated that personal care services (PCS) that are provided to inpatients or residents of a hospital, nursing home, intermediate care facility for individuals with intellectual disabilities, or an institution for mental illness, and PCS that do not require an in-home visit, are not subject to the EVV requirement. The respondent stated that the Centers for Medicare and Medicaid Services (CMS) is aware that PCS are provided in a variety of settings offering 24-hour service availability. CMS interprets the reference in the statute to an “in-home visit” to exclude PCS provided in congregate residential settings where 24-hour service is available. Consistent with this difference in service delivery model, typical reimbursement for services provided in these congregate settings utilizes a per diem methodology, rather than discrete per “visit” or per service payment structures. Therefore, the respondent stated CMS finds that services provided in a congregate residential setting are distinct from an “in-home visit” subject to EVV requirements under the statute.

**Department response 1:** When developing the rules for the EVV solution and the settings where EVV would be required for use, the Department reviewed guidance provided by CMS. The PCS for which the EVV solution is required to be used are CDAC and homemaker services. Both of these services are provided and billed in 15-minute units rather than a per diem rate. Providing services in 15-minute units is more aligned with providing discrete in-home per visit services provided by in-home caregivers. CMS guidance advises that states may choose to implement EVV for live-in caregivers and in congregate settings, particularly when using discrete units of reimbursement, such as on an hourly basis (or in Iowa’s case, 15-minute units). As such, the Department made the determination to require PCS provided by live-in caregivers and in congregate settings to use the EVV solution. The Department did not make a change from the Notice to allow the exclusion of live-in caregivers and services provided in congregate settings from the EVV solution.

**Comment 2:** One respondent recommended adding language to subrule 73.18(2) specific to the Consumer Choice Option (CCO) program within that subrule as it is the responsibility of the CCO member to maintain the adequate record keeping regarding their service delivery (per subparagraph 78.34(13)“m”(5)) and the responsibility of the financial management service provider (Veridian Fiscal Solutions) to maintain the payment documentation. The term “provider” could confuse these responsibilities. The respondent suggested wording changes to the administrative rule.

**Department response 2:** The requirements identified in rule 441—79.3(249A) codify the service documentation for home- and community-based services (HCBS), including services required to use EVV. The CCO rules in subparagraph 78.34(13)“m”(4) require CCO documentation to comport with the service documentation requirements in rule 441—79.3(249A). The EVV solution may be used to document PCS and, when used, can meet the requirements in rule 441—79.3(249A) for maintenance of service records.

Since the service documentation requirements are already established in rule 441—79.3(249A), the Department did not make a change from the EVV rules published under Notice.

**Comment 3:** The respondent recommended including the service of homemaker as a required EVV service for CCO. In addition, the respondent recommended adding language stating that it is the responsibility of the member to make copies of the time sheet since the financial management service provider (Veridian Fiscal Solutions) will no longer receive the information for EVV services. The respondent stated this requirement would align with the requirement outlined in subparagraph 78.34(13)“m”(5) indicating that if the information is submitted electronically, the member shall maintain a record for five years. In addition, the respondent recommended being more specific that the Form 470-4429 can only be used for the documentation of services provided, not for the submission of time for payment. The respondent stated that the way these changes are currently written, it could be interpreted that there is an option between the EVV solution and the time sheet as a way to submit for payment. The respondent suggested wording changes to the administrative rule.

**Department response 3:** PCS is the generic description for all services that are required to use EVV. For Iowa and the HCBS program, personal care includes CDAC and homemaker services. As such, homemaker services do not need to be specifically identified in the context of the rule.

As noted in Department response 2, rule 441—79.3(249A) codifies the requirements for service documentation for HCBS services, including services required to use EVV. The CCO rules in

subparagraph 78.34(13)“m”(4) require CCO documentation to comport with the service documentation in rule 441—79.3(249A). The EVV solution may be used to document PCS and, when used, can meet the requirements for maintenance of service records in rule 441—79.3(249A).

Since the service documentation requirements are already established in rule 441—79.3(249A), the Department did not make changes from the EVV rules published under Notice.

#### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on April 8, 2021.

#### *Fiscal Impact*

EVV implementation for personal care services will be completed via the MCO, and the approved contracted vendor will be in compliance with the mandate for the MCO population. There is no direct cost to the state. The FFS population compliance costs are larger than the non-compliance fee given the smaller FFS personal care services population and will be deployed to be in compliance in a second phase. The non-compliance fee is estimated at \$5,000 in SFY21 and \$15,000 in SFY22. There could potentially be an additional fee of approximately \$10,000 for the first six months of SFY23. The expectation is that FFS personal care will be implemented in the second phase when home health is implemented in January 2023. The Department expects to incur costs in SFY22 as it prepares for the January 2023 implementation. These development costs are currently estimated at \$2,040,000 and are expected to be reimbursed at a 90 percent federal match rate. There may also be development costs in SFY23, but the amount is not yet known. Estimates were based on market research. Estimates for the non-compliance costs for personal care services associated with the Federal Medical Assistance Percentages (FMAP) reduction in CY21 through CY23 were based on the FFS population currently receiving PCS.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

#### *Effective Date*

This rule making will become effective on July 1, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—73.1(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 2. Amend subrule 73.18(2) as follows:

**73.18(2)** *Content of individual treatment record.* The managed care organization shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of rule 441—79.3(249A) and pursuant to federal funding requirements, including 42 CFR 456 as amended to October 16, 2015. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

ITEM 3. Amend paragraph **78.34(7)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 4. Amend subparagraph **78.34(13)“m”(4)** as follows:

(4) ~~Employees~~ For personal care services, employees shall use an electronic visit verification system that captures all documentation requirements of the Consumer Choices Option Semi-Monthly Time Sheet (Form 470-4429) or use Form 470-4429. All other employees shall complete, sign and date Form 470-4429, Consumer Choices Option Semi-Monthly Time Sheet, for each date of service provided to a member. Documentation shall comport All employees shall maintain documentation that complies with 441—subparagraph 79.3(2)“e”(3), “Service documentation.” rule 441—79.3(249A).

ITEM 5. Amend paragraph **78.37(15)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care individual and agency providers ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). Assisted living facilities may choose to use Form 470-4389 or may devise another system that adheres to the requirements of rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 6. Amend paragraph **78.38(8)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 7. Amend paragraph **78.41(8)“c”** as follows:

*c. Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system

that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 8. Amend paragraph **78.43(13)“c”** as follows:

c. *Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 9. Amend paragraph **78.46(1)“c”** as follows:

c. *Service documentation.* The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 10. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.1(249A)**:

*“Electronic visit verification system”* means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 11. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.21(249A)**:

*“Electronic visit verification system”* means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 12. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.41(249A)**:

*“Electronic visit verification system”* means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 13. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.60(249A)**:

*“Electronic visit verification system”* means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 14. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.81(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 15. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.101(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 16. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.121(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

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